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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,730	01/08/2002	Mie Takahashi	2001-1464A	5291

513 7590 05/18/2005

WENDEROTH, LIND & PONACK, L.L.P.
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WASHINGTON, DC 20006-1021

EXAMINER

COUNTS, GARY W

ART UNIT PAPER NUMBER

1641

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/937,730

Applicant(s)

TAKAHASHI ET AL.

Examiner

Gary W. Counts

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: _____.

Claim(s) rejected: 5,12,27,31,41,45,49,53 and 60.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached continuation.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


LONG V. LE

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

05/13/05

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Continuation of 11 NOTE: Applicant argues that the polyethylene glycol surfactants which the Examiner evaluates as equivalents to n-octyl-B-D-thioglucoside or sucrose monolaurate surfactants are not polyethylene glycol. Rather, Yamamoto et al. disclose polyethylene glycol ether. Polyethylene glycol, illustrated as a surface active agent in Chu, and polyethylene glycol ether, illustrated as a surface active agent in Yamamoto et al., are quite different chemical compounds. Therefore, the surface active agent in Chu and the surface active agent in Yamamoto et al. cannot be said to be equivalent, and the Examiner's motivation for combining the teachings of Chu and Yamamoto et al. is unfounded. This is not found persuasive because although Examiner aggress polyethylene glycol (singular form) and polyethylene glycol ether are different chemical compounds, the Chu reference specifically teaches that polyethylene glycols are the preferred surfactants and one skilled in the art would recognize that polyethylene glycol ether is within the family of polyethylene glycols. Further, it appears Applicant has misunderstood the statement of equivalence as Examiner stated that Chu teaches that polyethylene glycols are a preferred surfactant and Yamamoto teaches the equivalence of polyethylene glycol surfactants to n-octyl-B-D-thioglucoside or sucrose monolaurate surfactants for their addition to reaction layers. Therefore, Chu specifically teaches that polyethylene glycols are preferred and Yamamoto teaches the equivalence of a polyethylene glycol surfactant to n-octyl-B-D-thioglucoside or sucrose monolaurate.

Applicant further argues a surface active agent that is solidified when dried means a surface active agent which is a solid at normal temperature and normal pressure and that a surface active agent such as Tween20, which is illustrated in Chu, and

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Tritonx405, both of which are often used in biosensors, are in liquid states at normal temperature and normal pressure. Specifically, the melting point of Tween 20 is 0.1 degrees C, and the melting point of Tritonx405 is 6 degrees C, both below normal temperature. Therefore, these are not surface active agents which are solidified when dried, as required in Applicants' claims. This is not found persuasive because it appears Applicant is arguing the references individually and absent evidence to the contrary the combination of Chu and Yamamoto et al possess a surface active agent that is solidified when dried and which is a solid at normal temperature and normal pressure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary W. Counts whose telephone number is (571) 2720817. The examiner can normally be reached on M-F 8:00 - 4:30.

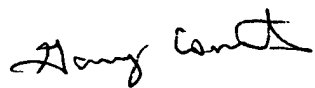
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Gary Counts". The signature is written in a cursive, flowing style.

Gary Counts

Examiner

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May 9, 2005